IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8994 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

ILIAS ABDULREHMAN

Versus

DY GENERAL MANAGER

Appearance:

MR IS SUPEHIA for Petitioner No.1

MR AS KAPOOR PARTY-IN-PERSON for Petitioner No.2

M/S TRIVEDI & GUPTA for Respondent No. 1

MR MN TRIVEDI for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 21/09/2000

C.A.V. JUDGEMENT

1. The petitioner, a workman, has, by way of this petition, approached this Court under Articles 14, 16 and

227 of the Constitution with the prayer to quash and set aside the award of the Industrial Tribunal, Ahmedabad in Reference (ITC) No.23 of 1987 and to direct the respondents to reinstate the petitioner in service with all consequential benefits.

2. It was the case of the petitioner before the Industrial Tribunal that he was employed under the respondents from 1.1.1982 and he worked for more than 240 days till 30.7.1984, after which his service was terminated in violation of Section 25-F of the Industrial Disputes Act, 1947. The defence of the respondents was that the petitioner had worked under different departments on daily-wage basis and in the later part he was working only as a water supply contractor. It was contended before the Tribunal that the petitioner had not completed even six months of service under a particular section or department and his services under different departments cannot be put together for holding that he was in continuous service for more than 240 days in the year preceding his alleged termination. It was further submitted that at the time of subsequent recruitments, the case of the petitioner could not be considered as the petitioner failed to produce the certificate of minimum educational qualification required under the Rules of the respondents. On these facts and accepting the contentions of the respondents, the reference was decided against the petitioner by the impugned order made on 16.3.1990.

3. It is admitted in the petition itself that the petitioner was engaged as a water-server and also to perform other ancillary jobs for different periods in Mehsana and under geophysical party, chemistry section and production section. According to the petition, the fact that the petitioner was working as a water-server and not a water-supplier was not in dispute. It is also stated that the so-called different parties, sections or departments were subordinates of one employer and the salary of the petitioner was paid from the funds of the employer Corporation. As for the lack of necessary educational qualification, it is submitted that the petitioner has studied upto 11th Standard wherein he had failed, but he could not produce the proof of his qualification as necessary intimation was not conveyed to him by the trade union which was conducting the case. However, it is submitted that since the petitioner had completed 240 days of service under the same employer and the provisions of Section 25-F of the Act were admittedly violated in the matter of termination of his service, he

was entitled to be reinstated with backwages.

4. The learned counsel appearing for the respondents submitted that since the appointments under the respondents are made strictly according to its regulations and recruitment rules, the petitioner cannot be ordered to be reinstated only on the ground of his having completed 240 days in service under the respondents. In support of this submission, the judgment of this Court in VITTALBHAI BABALDAS PATEL v. CHAIRMAN, ONGC [1987 (2) GLR 1308) is relied upon. It is observed in the said judgment that regular appointment in an organization like the Commission has to be made in accordance with settled law or rules or regulations governing such appointment and the prescribed procedure. A person who is given a temporary employment or is given employment as contingent work-charged employee cannot claim regular employment merely on the basis of such temporary employment. It has to be noted that the issue of termination of service of an employee of the respondent in violation of Section 25-F of the Act had not come up for decision in that case at all. Therefore, that judgment has no application in the facts of the present case. The learned counsel for the respondent further submitted that the finding of the Tribunal in the impugned award to the effect that the petitioner had worked for different periods in different sections ought to be upheld and consequently the finding that the petitioner had not completed 240 days of service in any one unit under the respondent also ought to be upheld. In support of this submission, the learned counsel has relied upon a judgment of the Full Bench of the Supreme Court in INDIAN CABLE CO. LTD. v. ITS WORKMEN [(1962) I LLJ 409] wherein, in the context of Section 25-G of the I.D.Act, it is held that branches of a company located in different places must be held to be distinct "industrial establishments" for the purposes of Section 25-G. It is also observed that the question whether a branch or a department is in itself an "industrial establishment" within the meaning of Section 25-G is one of mixed fact and law. Thus, in the facts of that case it was held that as the branches were located in different places and there was lack of functional integrality, such branches were separate "industrial establishments".

5. In the instant case, the legality of termination of the service of the petitioner is required to be decided on the basis of Section 25-F of the Act and not on the basis of the provisions of Section 25-G. The conditions precedent for retrenchment of a workman apply

when he is employed in an "industry" and has been in continuous service for not less than one year under an "employer". The expressions "employer" and "industry" are defined in Section 2 (g) and 2 (j) of the Act, which do not refer to a particular department or section of the industry. As against that, Section 25-G expressly refers to the situation where a workman in an "industrial establishment" is to be retrenched. Therefore, the concept of "industrial establishment" and the aforesaid decision to consider a separate department as an "industrial establishment" cannot be inducted into the consideration of the issue arising from the violation of Section 25-F of the Act. In this view of the matter, it is held that the service of the petitioner under several parties, sections or departments in the same industry has to be counted as under the same employer; and consequently, the termination of such service has to be held illegal in view of the admitted non-compliance of the provisions of Section 25-F of the Act. No other issues are raised in this petition on either side during the course of arguments.

6. As the conclusions reached by the learned Industrial Tribunal are clearly found to be incorrect and inconsistent with the relevant provisions of law as above and as the termination of service of the petitioner is found to be void, it has to be examined whether the relief of reinstatement with full backwages can be granted as prayed in the petition. While the termination of service is found to be illegal and the condition precedent to retrenchment is found to be violated, the termination has to be held to be void and consequently an order of reinstatement must follow. However, as far as the relief of backwages is concerned, the facts that the petitioner was discharged in 1984, the reference was made in 1987, the impugned order was made in 1990 and this petition is being disposed in the year 2000 have to be taken into account. As recently observed by the Hon'ble Supreme Court in MANAGEMENT OF M.C.D. v. PREM CHAND GUPTA [AIR 2000 SC 454], where for no fault of the contesting parties the litigation has lingered on for decades, to saddle a party with full backwages for the entire period would be too harsh while the workman could not have remained totally unemployed for all the years. On the same analogy, and in the facts and circumstances of this case, the grant of 50% of backwages from the date of reference, i.e. 6.4.1987, would meet the ends of justice.

7. Accordingly, the petition is allowed, the impugned award of the Industrial Tribunal in Reference

(ITC) No.23 of 1987 is quashed and set aside and the respondents are directed to reinstate the petitioner with continuity of service with 50% of the backwages. This order shall be implemented within four weeks of its receipt by the respondents. Rule is made absolute with no order as to costs.

Sd/-

(KMG Thilake)

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